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L.C., I.H., A.L., and Antonia Salas Ubaldo

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

L.C., a minor by and through her guardian *ad litem* Maria Cadena, individually and as successor-in-interest to Hector Puga; I.H., a minor by and through his guardian *ad litem* Jasmine Hernandez, individually and as successor-in-interest to Hector Puga; A.L., a minor by and through her guardian *ad litem* Lydia Lopez, individually and as successor-in-interest to Hector Puga; and ANTONIA SALAS UBALDO, individually;

Plaintiffs,

vs.

STATE OF CALIFORNIA; COUNTY OF SAN BERNARDINO; S.S.C., a nominal defendant; ISAIAH KEE; MICHAEL BLACKWOOD; BERNARDO RUBALCAVA; ROBERT VACCARI; JAKE ADAMS; and DOES 6-10, inclusive,

Defendants.

Case No. 5:22-cv-00949-KK-SHK

Honorable Kenly Kiya Kato

**PLAINTIFFS' OPPOSITION TO
STATE DEFENDANTS' MOTION IN
LIMINE NO. 1 TO EXCLUDE
PORTIONS OF THE TESTIMONY
OF PLAINTIFFS' EXPERT
MATTHEW KIMMINS AND TO
EXCLUDE HIS VIDEOS**

1 **I. MR. KIMMINS' VIDEOS AND OPINIONS ARE HELPFUL TO THE**
2 **TRIER OF FACT**

3 The central dispute in this case is whether Mr. Puga posed an immediate threat
4 of death or serious bodily injury at the time of the shooting. There are several facts in
5 this case, some of which are in dispute, that will assist the jury in determining
6 whether Mr. Puga posed an immediate threat and ultimately, whether the officers' use
7 of deadly force was justified. For example, Plaintiffs contend that after exiting his
8 vehicle, Mr. Puga's hands were visibly empty, that he repeatedly raised his hands to
9 comply with commands and to show he was not a threat, but that he dropped his
10 hands a number of times while he was outside of his vehicle in order to wipe his face
11 to alleviate himself of the effects from the pepper balls or to pull up his pants. For all
12 the times Mr. Puga dropped his hands to wipe his face or pull up his pants with the
13 exception of the last time when the shooting occurred, the involved officers did not
14 use force and in fact, admitted that they recognized he was dropping his hands to
15 wipe his face and to pull up his pants. Moreover, Plaintiffs contend that Mr. Puga was
16 shot multiple times after he had fallen to the ground, during which the officers
17 conceded that he no longer posed an immediate threat of death or serious bodily
18 injury. Plaintiffs further contend that the *number* of shots after Mr. Puga had fallen to
19 the ground is important to evaluating the reasonableness of the officers' use of deadly
20 force.

21 There are several video sources that capture the incident, including the
22 shooting, from different angles, thereby capturing different, important aspects of the
23 incident. However, no one video is able to accurately capture the entirety of Mr.
24 Puga's movements due to certain obstructions based on the angle of the camera.
25 Thus, Plaintiffs' video analyst and graphics expert, Matthew Kimmins, was tasked
26 with synchronizing videos that captured relevant, key portions of the incident in order
27 to give the trier of fact a more comprehensive view of what occurred that night,
28 including what the involved officers were able to or should have been able to

1 observe, that was not captured on certain video sources due to their distance, angle,
2 and quality.

3 First, it is important to note that Defendants do not take issue with Mr.
4 Kimmins' qualifications to identify sound recordings or to synchronize video records.
5 Nor do Defendants take issue with the accuracy or reliability of Mr. Kimmins'
6 synchronization of the videos. Instead, Defendants seek to exclude the entirety of the
7 composite video, which synchronized relevant videos of the incident from different
8 video sources in order to provide a comprehensive view of the incident, on the sole
9 basis that the timestamp descriptions contained in the video are not helpful to the
10 jury. However, as expressed in Mr. Kimmins' expert report and deposition testimony,
11 the timeline descriptions contained in the composite video reflect the specific,
12 significant visual/audio cues that assisted Mr. Kimmins in the synchronization of the
13 videos. For example, the description, "03:43 With his hands up, Puga walks to the
14 front of the vehicle" reflects the one of the specific visual cues Mr. Kimmins relied
15 on in synchronizing the video from Officer Michael Blackwood's MVARs video,
16 witness Erin Magerino's cell phone video, and witness Betzabeth Gonzalez's cell
17 phone video. (Ex. A to Esquivel Decl., Kimmins Report at 5). Indeed, Mr. Kimmins
18 testified at his deposition that the timestamp descriptions were "not in any attempt to
19 infer bias, guilt, innocence, anything, just what I was going to see." (Ex. B to
20 Esquivel Decl., Kimmins Dep. 113:13-114:1). Such testimony regarding how a video
21 expert synchronized video recordings are generally deemed admissible. *See Jones v.*
22 *City of Los Angeles*, No. 2:20-CV-11147-FWS-SK, 2023 WL 2559230, at *3 (C.D.
23 Cal. Feb. 24, 2023) (video expert's testimony as to his observations of what is
24 depicted in the video are admissible and helpful to the jury as they were necessary to
25 explain the basis for his expert opinions regarding his video analysis and editing and
26 how he came to form his opinions); *United States v. Astarita*, No. 3:17-CR-00226-
27 JO, 2018 WL 3097012, at *4 (D. Or. June 20, 2018) (video expert's testimony
28 identifying sounds on recordings and synchronizing video recordings depicting the

1 same content from different vantage points was admissible). Accordingly, Mr.
2 Kimmins' composite video, which includes the timestamp descriptions, is relevant
3 and helpful to the trier of fact as it provides a more comprehensive depiction of the
4 incident, assisting the jury in determining more accurately the conduct of Mr. Puga
5 and the involved-officers during the incident and in understanding how the videos
6 were accurately synchronized, and thus is admissible at trial. *Cf. T.D.P. v. City of*
7 *Oakland*, No. 3:16-CV-04132-LB, 2019 WL 913840, at *3 (N.D. Cal. Feb. 24, 2019)
8 (finding video expert's accurate description of the what is depicted in the video
9 admissible due to the poor quality of the video, the plaintiffs' inability to have a
10 sponsoring witness talk about the images in the video because the suspect in the
11 video is dead, and the descriptions being consistent with the officers' accounts of the
12 incident).

13 Additionally, Mr. Kimmins' bullet count video is reliable and will be helpful
14 to the trier of fact in determining the reasonableness of the use of deadly force after
15 Mr. Puga had gone to the ground. While Mr. Kimmins concedes that he could not
16 give an *exact* count of the shots that occurred after Mr. Puga went to the ground and
17 such determination should be left to a forensic audio expert, Mr. Kimmins testified
18 that he was able to give an fair *estimate* of the number of shots that occurred after Mr.
19 Puga fell to the ground because Blackwood's MVARs video contained two audio
20 forms—one from the exterior of the vehicle and one from the interior—and that when
21 he isolated the audio channel from the interior of the vehicle, he was able to see (in
22 WAV form) and hear more distinctive peaks of sounds, giving more clarity to the
23 number of shots that were fired after Mr. Puga went to the ground. (Ex. B to Esquivel
24 Decl., Kimmins Dep. 91:18-94:20, 99:20-100:20). The accuracy of his count and
25 whether he can determine the *exact* number of shots based on his review of the audio
26 files goes to the weight of his testimony, not admissibility. Accordingly, Mr.
27 Kimmins' bullet count video is reliable and should be admitted as it is helpful to the
28 trier of fact in determining the reasonableness of the officers' use of force.

1 **II. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request the Court deny State
3 Defendants' Motion in Limine No. 1 to Exclude Portions of the Testimony of
4 Plaintiffs' Expert Matthew Kimmins and to Exclude his Videos in its entirety.

5
6 Respectfully Submitted,

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8 Dated: April 24, 2025

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10 By: /s/ Hang D. Le

Dale K. Galipo

Hang D. Le

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12 *Attorneys for Plaintiffs L.C., I.H., A.L., and*
13 *Antonia Salas Ubaldo*

Certificate of Compliance

The undersigned, counsel of record for Plaintiffs L.C., I.H., A.L., and Antonia Salas Ubaldo, certifies that this brief contains **1,142** words, which complies with the 7,000 word limit of L.R. 11-6.1.

Dated: April 24, 2025

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